

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	File Number: EB-10-SD-0018
Pacific Spanish Network, Inc.	)	
	)	NAL/Acct. No: 201132940003
Licensee of WQCV596	)	
Chula Vista, California	)	FRN: 0012469557
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: February 25, 2011

Released: February 25, 2011

By the Acting District Director, San Diego District Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Pacific Spanish Network Inc. (“Pacific Spanish”), licensee of Fixed Microwave Service radio station, WQCV596, in Chula Vista, California, apparently willfully and repeatedly violated section 1.903(a) of the Commission’s rules (“Rules”)<sup>1</sup> by operating a microwave radio station on a frequency and antenna orientation not authorized by its license. We conclude that Pacific Spanish is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

**II. BACKGROUND**

2. On February 28, 2010, the Enforcement Bureau’s San Diego Office (“San Diego Office”) received information that an application submitted by Pacific Spanish for modification of its Fixed Microwave Service radio station license for WQCV596 had been dismissed by the FCC for failing to make payment on a delinquent debt. A search of the Commission’s database revealed that Pacific Spanish filed an application on January 6, 2010 (“January 2010 Application”)<sup>2</sup> to: (1) change the operating frequency from 22473.5 MHz to 21241.5 MHz; (2) change the antenna azimuth from 116.2° to 161.5°; and (3) relocate the endpoint of the microwave path in Tijuana, Mexico.

3. The January 2010 Application was returned by the Commission’s Wireless Telecommunications Bureau (“WTB”) on February 23, 2010.<sup>3</sup> In the dismissal letter, WTB cautioned

<sup>1</sup> 47 C.F.R. § 1.903(a).

<sup>2</sup> See File No. 0004084152, filed January 6, 2010.

<sup>3</sup> *Notice of Dismissal* to Pacific Spanish Networks, Inc., from Federal Communications Commission, Wireless Telecommunications Bureau, dated February 23, 2010. Pacific Spanish was previously assessed a \$10,000 forfeiture for operating on 22473.5 MHz at the Chula Vista Location during 2005. *Pacific Spanish Network, Inc.*, 21 FCC Rcd 2073 (EB 2006) (“2006 Forfeiture Order”). Pacific Spanish paid this forfeiture on March 17, 2010.

Pacific Spanish that “[i]f you are currently operating under authority provided by the Commission’s Rules based on your submission of the above referenced application, you must immediately cease operation until such time as you come into compliance with the Rules.”<sup>4</sup>

4. On March 1, 2010, the agents from the San Diego Office traveled to the WQCV596 control point, located at 296 H Street, Chula Vista, California (“Chula Vista Location”) and, using a spectrum analyzer, observed the operating parameters of Station WQCV596. The San Diego agents found that a signal on 21241.5 MHz was being emitted from their microwave antenna, and its antenna was now pointed at an azimuth approximately 160° atop the building roof, in the manner proposed in the January 2010 Application.

5. On March 2, 2010, agents from the San Diego Office returned to the Pacific Spanish’s Chula Vista Location and again found the microwave radio station active on 21241.5 MHz, and its antenna pointed at an azimuth approximately 160° atop the building roof.

6. On March 18, 2010, Pacific Spanish resubmitted its application to modify the Station WQCV596 license (“March 2010 Application”).<sup>5</sup> As in the January 2010 Application, Pacific Spanish proposed to: (1) change the station’s operating frequency from 22473.5 MHz to 21241.5 MHz; (2) change the antenna azimuth from 116.2° to 161.5°; and (3) relocate the endpoint of the microwave path in Tijuana, Mexico.<sup>6</sup>

7. On April 9, 2010, agents from the San Diego Office returned to the Pacific Spanish’s Chula Vista Location and once again found the microwave radio station still active on 21241.5 MHz and its antenna pointed at an azimuth approximately 160° atop the building roof. An inspection of the microwave radio station was conducted at this time, but station personnel present at the office were unable to answer the technical questions asked by the San Diego agent. The agent was directed to speak with a Pacific Spanish engineer by telephone. The engineer claimed that a license to operate on frequency 21241.5 MHz had been issued and a copy would be e-mailed to the FCC’s San Diego office. Later that day, the San Diego Office received an e-mail message from the Pacific Spanish engineer with an attachment containing a copy of Pacific Spanish’s license for Station WQCV596. However, this license was a copy of the original authorization granted on June 6, 2005, to operate on frequency 22473.5 MHz. No authorization was provided by Pacific Spanish indicating that it was authorized to operate Station WQCV596 on 21241.5 MHz at the time of the inspection.

8. On June 9, 2010, WTB granted the March 2010 Application allowing the use of frequency 21241.5 MHz with a reorientation of the antenna to an azimuth of 161.5°.

### III. DISCUSSION

9. Section 503(b) of the Communications Act of 1934, as amended, (“Communications Act” or “Act”) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>7</sup> The term “willful” as used in section 503(b) of the Act has been interpreted to mean

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<sup>4</sup> *Id.*

<sup>5</sup> *See* File No, 0004177603, filed March 18, 2010.

<sup>6</sup> *See id.*

<sup>7</sup> 47 U.S.C. § 503(b).

simply that the acts or omissions are committed knowingly.<sup>8</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

10. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission.<sup>10</sup> Pacific Spanish was authorized under license WQCV596 to operate on microwave channel 22473.5 MHz, with an antenna azimuth of 116.1°. In addition, sections 101.31(b)(1) and 101.31 (b)(1)(v) of the Rules, provides that certain applicants for point-to-point microwave stations, not located within 56.3 kilometers of any international border, and operating in certain frequency bands, are deemed to have conditional authority to operate their proposed stations during the pendency of their applications.<sup>11</sup> The frequency proposed for use by Pacific Spanish in its applications is not contained in the frequency bands specified in Part 101 of the Rules. Also, Pacific Spanish’s proposed station is located too close to the U.S. – Mexico border, approximately 10.6 km, to authorize operations under conditional licensing. Therefore, Pacific Spanish did not have conditional authority to operate on 21241.5 MHz or to change the station’s authorized antenna azimuth by approximately 50° during the pendency of its application to modify the license for Station WQCV596.<sup>12</sup>

11. As discussed above, on March 1, 2010, March 2, 2010, and April 9, 2010, measurements made by San Diego agents revealed that Pacific Spanish was operating microwave radio station WQCV596 on channel 21241.5 MHz with an antenna azimuth of approximately 160°. A review of Commission records indicates that Pacific Spanish had no authorization to operate on this frequency and with this antenna azimuth. Because Pacific Spanish knowingly operated Station WQCV596 on an unauthorized frequency and antenna orientation, we find the violation was willful. Because the violation occurred on more than one day, it was repeated. Based on the evidence before us, we find that Pacific Spanish apparently willfully and repeatedly violated section 1.903(a) of the Rules by operating on frequency 21241.5 MHz with an antenna azimuth of approximately 160°, a frequency and antenna azimuth not authorized in its license.

12. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for using an unauthorized frequency is \$4,000.<sup>13</sup> In assessing the monetary forfeiture

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<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>9</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>10</sup> 47 C.F.R. § 1.903(a).

<sup>11</sup> 47 C.F.R. §§ 101.31(b)(1), 101.31(b)(1)(v).

<sup>12</sup> See 47 C.F.R. § 101.21. The technical content of applications for Part 101 users require data concerning transmitter parameters, such as frequency, power and modulation emissions as well as antenna information such as antenna gain, azimuth and path length.

<sup>13</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

(continued...)

amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>14</sup> Consequently, the base forfeiture amount is subject to adjustment. Pacific Spanish was aware that it was permitted to operate only on the frequency authorized for its microwave station, as evidenced by its January 2010 and March 2010 Applications, and the warning it received in WTB's February 2010 dismissal letter. Thus, we find that an upward adjustment in the forfeiture amount of \$2,000 is warranted.<sup>15</sup> Applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude that Pacific Spanish is apparently liable for a forfeiture of \$6,000.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311 and 1.80 of the Rules, Pacific Spanish Network, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for violation of section 1.903(a) of the Rules.<sup>16</sup>

14. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Pacific Spanish Network, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>17</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Pacific Spanish Network, Inc. shall send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to

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<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> See 47 C.F.R. § 1.80(b)(4). See also *Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture, DA 11-8 (Enf. Bur., Spectrum Enf. Div., Rel. Jan. 4, 2011).

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.903(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.

sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, California, 92111, and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall also be emailed to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Pacific Spanish Network, Inc., 296 H Street, Chula Vista, California, 91910.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon  
Acting District Director  
San Diego District Office  
Western Region  
Enforcement Bureau